

## A Silk Purse from a Sow's Ear? Or, the Hidden Value of Being Short-Staffed

“A decision to ‘replace’ faculty with student TAs may strike many readers of *Perspectives* as a very bad idea.”

*Brutal Choices in Curricular Design ... is a regular feature of Perspectives, designed to explore the difficult curricular decisions that teachers of legal research and writing courses are often forced to make in light of the realities of limited budgets, time, personnel, and other resources. Readers are invited to comment on the opinions expressed in this column and to suggest other “brutal choices” that should be considered in future issues. Please submit material to Helene Shapo, Northwestern University School of Law, 357 East Chicago Avenue, Chicago, IL 60611, phone: (312) 503-8454, fax: (312) 503-2035.*

**By Kate O’Neill**

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In spring 2003, as director of our Basic Legal Skills Program (BLS), I had a choice. By autumn, two of our four faculty would be gone—one to a well-deserved sabbatical and one to a tenure-track position elsewhere. The options were to fill the two vacant positions, one permanently and one only temporarily—or to do something else.

I chose something else. I asked the dean to use the salary dollars to employ for one year an expert in designing professional writing programs and to employ student teaching assistants to alleviate the impact of the 50 percent reduction in our teaching faculty! The dean agreed and my dedicated, wonderful longtime colleague, Kathleen McGinnis, agreed to work with me in my madness.<sup>1</sup>

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<sup>1</sup> Kathy deserves an award for her willingness to participate in this adventure, upending her work life for a year. She contributed wisdom drawn from more than a decade of experience teaching BLS, intelligence, insight into law and people, terrific efficiency, and the ability to avert my worst schemes with good-humored wit. I could not have undertaken this effort without her.

### **A Little Background on the Method in My Madness**

A decision to “replace” faculty with student teaching assistants (TAs) may strike many readers of *Perspectives* as a very bad idea. Practically, an upper-level law student lacks enough knowledge, experience, and time to teach well, and politically, employing TAs in lieu of faculty might jeopardize the decades-long effort to ensure that legal research and writing (LRW) courses, including the one at our school, are taught by full-time faculty with appropriate compensation, job security, and status.<sup>2</sup> I recognized the risk that today’s supportive deans could be followed by tomorrow’s penny-pinchers. The latter might see in a successful use of TAs evidence that BLS could be taught on the cheap with one or two faculty. And, I knew that many incoming students were likely to assume that interaction with TAs was an inferior substitute for the prior year’s course in which students were taught exclusively by faculty.

On the other hand, this hiatus in staffing-as-usual gave me a golden opportunity to test two related hypotheses: one that we might be burning through more faculty time in the first-year program than we added value for our students,

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<sup>2</sup> In fact, part of my reluctance to hire was concern for the uncertain futures of any new faculty: one person’s appointment was unlikely to endure beyond the term of my colleague’s sabbatical; the other person might accept a contract position and find that, no matter how meritorious her teaching and scholarship became, that initial status might render her ineligible for promotion to a tenure-track position. Because the appropriate initial status or eligibility for promotion of contract faculty was a live, but unresolved, issue at our school, I hesitated to recruit new teachers at this juncture, knowing how aspiring academics were likely to perceive uncertainty as grounds for optimism. Standing alone, however, concerns about the futures of new faculty would not justify shorting our students of qualified faculty or my one remaining colleague and me of sufficient support.

and the other that we could improve our graduates' effectiveness as researchers and professional writers if we directed relatively more of the time of experienced "writing teachers" to "advanced" writing courses. My intuition was that through careful redesign of our instructional model, we could decrease faculty hours devoted exclusively to the first-year program with no detriment to student learning. In an ideal world with big budgets, the easier course might be simply to add the upper-level courses later, but big budgets were not on the horizon. Moreover, I have learned that a status quo in personnel tends to result in a status quo in curriculum. I wanted to test a new methodology and staffing model for the "typical" first-year legal writing course whether it would ultimately free up faculty time or not; in an odd way, our impending shortage of faculty made that easier.

A few years ago, I began to perceive a paradox about our first-year program—the more my senior colleagues and I improved the course design, materials, and classroom teaching, the fewer students needed quasi-tutorial instruction and feedback from us. That made me wonder about the theoretical or empirical support for the widespread assumption that the best instructional model for LRW was faculty-intensive: small sections, individual conferences, and individual comments on student writing—all provided by faculty, the more senior the better. While there was an extensive body of literature about how to provide better instruction within that model, there was nothing that really supported the underlying premise that that was the appropriate model in the first place. In contrast, the literature on learning and composition theory from other disciplines cast doubt on the assumption that this individual expert/student, quasi-tutorial instructional model was ideal or even particularly effective.

I now think that the staffing model our discipline inherited and which is thought to characterize "better" legal writing programs—a teacher/student ratio around 1 to 45 and classroom instruction delivered to "small" sections of about 23 students—is mostly a function of how many memos an individual teacher can read and comment upon in a reasonable amount of time. That staffing model was adopted at a time when most people—certainly most law faculty—assumed that individual feedback from a teacher dedicated to the mission was the most effective way to teach students to "write." If, however, research into adult learning is correct that expert-to-novice editorial feedback may not be particularly effective in teaching beginners to communicate effectively in a new discipline, some law schools (like ours) may be making inefficient use of resources by devoting almost all experienced writing faculty's time to a first-year LRW program. Instead, it might be better to use that expertise to design course materials, lesson plans, and exercises and to delegate ministerial supervision and basic feedback to TAs. This would release some skilled faculty to work individually with first-year students who have idiosyncratic needs and to teach upper-level courses where I believe students are more likely to understand and use expert feedback to enhance their ability to analyze complex legal issues, organize multiple, related issues, write to varied audiences effectively, develop a professional and perhaps even individual authorial "voice," and perhaps even make novel, creative contributions to legal discourse. Given a relatively steady budget for legal research and writing courses, I believe that this division of labor would be a more efficient use of academic resources and would help law graduates participate in the discipline and the practice of law more effectively and with greater personal satisfaction.

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### What Did We Change?

We hired learning theory expert Carolyn Plumb,<sup>3</sup> who helped us think systematically about the most efficient structure for students to attain course objectives. During the summer of 2003, she began by insisting that I specify the course learning objectives in detail. Not a lawyer, Carolyn did not share my vocabulary or assumptions. If I said one course objective was to teach “common law synthesis,” she responded, “What’s that?” The dialogue was very educational—mostly for me—and the result was four single-spaced pages of learning objectives.<sup>4</sup>

After we made explicit our existing, implicit objectives—and eliminated quite a few as unrealistically ambitious—Carolyn helped us think about how to teach those objectives most efficiently—a key goal since we only had two teachers for 180 students—and how to assess whether we and our students were meeting

objectives.<sup>5</sup> We thought carefully about the best sequence and we considered what teaching vehicle was most appropriate. Rather than thinking about how to teach students to produce various standard assignments (a memo on a common law issue; a brief on a statutory interpretation problem), we thought about what information and skills we wanted students to have by June, what classes, exercises, and assignments would give students good opportunities to learn those things, and then separately, what types of work product would enable us to assess student achievement.<sup>6</sup>

We made six key course design decisions. First, we decided that didactic readings and faculty lectures

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<sup>3</sup> At the time Carolyn Plumb was a senior lecturer in the university’s Technical Communications Department, held a master’s in English and a Ph.D. in Educational Psychology, and was the director of the writing program at our University’s Engineering School. I had earlier sought her advice on how to undertake a sophisticated review and reform of our program and also solicited references from her for technical communications Ph.D.s whom we might hire as writing specialists. Planning to move to another state and institution in 2004–05, Carolyn was eager for a new challenge during her final year in Seattle. We were able to negotiate a perfect solution to our goals: she would join Kathy and me as a senior lecturer for one year to help us review and redesign the program. In addition to providing the theory and experience for our reforms and our assessment tools, Carolyn also took over all of the administrative work in the program. She produced course materials, set up and monitored the Web site, trained and supervised our teaching fellows, and kept track of due dates, grade recordation, etc. Supremely organized, unflappable, creative, and an experienced mentor to graduate teaching assistants, she was invaluable and she enabled us to see how we might design the course and employ student assistants in a way that would not just be a stopgap but an improvement over our previous pedagogy.

<sup>4</sup> If nothing else, we saw vividly what we had known intuitively—that there were too many, disparate learning objectives. In particular, our list of objectives documented what I had long argued—that the course had over time accumulated objectives from introducing students to the structure of U.S. legal institutions, to techniques of reasoning, to textual interpretation, to problem solving for clients, to research techniques, to basic organization techniques through relatively sophisticated, discipline-specific rhetorical strategies for communicating credibly and effectively to some hypothetical legal audiences.

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<sup>5</sup> Objective assessment of students’ achievement is important and, equally, is objective assessment of what outcomes various teaching methodologies produce. See Greg Munro, *Outcomes Assessment for Law Schools* (2000). Designing good internal and external, longitudinal assessment techniques was a major focus of Carolyn’s work. A detailed discussion of our assessment techniques must await another article.

<sup>6</sup> Our work was informed by social science research on how adults learn, composition theory, and recent scholarship on law school curricula. We have an article in draft with comprehensive footnotes. Please contact me if you would like to read a copy in advance of publication. Some key sources on learning and composition include: John D. Bransford, Nancy Vye, and Helen Bateman, *Creating High-Quality Learning Environments: Guidelines from Research on How People Learn*, in *The Knowledge Economy and Postsecondary Education: Report of a Workshop* (2002); Committee on Learning Research and Educational Practice, National Research Council, *How People Learn: Bridging Research and Practice* (M. Suzanne Donovan, John D. Bransford & James W. Pellegrino eds., 1999); John D. Bransford, with the Cognition and Technology Group at Vanderbilt, *Designing Environments to Reveal, Support, and Expand Our Children’s Potentials*, in *Perspectives on Fundamental Processes in Intellectual Functioning* (S.A. Soraci & W. McIlvane eds., 1998); Kenneth A. Bruffee, *Social Construction, Language, and the Authority of Knowledge: A Bibliographic Essay*, 48 *College English* 8, 773 (1986); Kenneth A. Bruffee, *Collaborative Learning and the “Conversation of Mankind,”* 46 *College English* 7, 635 (1984); Jean Lave and Etienne Wenger, *Situated Learning: Legitimate Peripheral Participation* (1991); Lev Vygotsky, *Thought and Language* (Alex Kozulin trans., 1986).

Sources specific to legal education include: Karen Gross, *Process Reengineering and Legal Education: An Essay on Daring to Think Differently*, 49 *N.Y.L. Sch. L. Rev.* 435 (2004–2005); Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 *J. Legal Educ.* 75 (2002); Richard A. Matasar, *The Rise and Fall of American Legal Education*, 49 *N.Y.L. Sch. L. Rev.* 465 (2004–2005); Greg Munro, *Outcomes Assessment for Law Schools* (2000); Judith Welch Wegner, *The Curriculum: Patterns and Possibilities*, 51 *J. Legal Educ.* 431 (2001); D. Don Welch, “What’s Going On?” in *the Law School Curriculum*, 41 *Houston L. Rev.* 1607 (2005).

were the best methods for meeting course objectives that required students to learn facts and that there was no pedagogical reason for delivering this information in small classes; second, that we would test knowledge of “information” by multiple-choice or short-answer tests, and not papers; third, that collaborative peer workshops were best for meeting objectives that required students to develop skills and apply information; fourth, that it would be better for students’ morale and more efficient for us to assign principal responsibility for guiding students in the research and drafting stages to the TAs and sole responsibility for grading student work to faculty; fifth, that faculty would not comment individually on student work until a draft had been through several iterations in workshop and had been reviewed at least once by a TA; and sixth, that the course would be exempted from the law school’s mandatory curve to eliminate any disincentive for peer collaboration.

The resulting changes were most visible in fall quarter, to which three of our six total credits are allocated. Instead of six faculty-taught small sections for three 50-minute periods per week, one faculty member delivered a 50-minute lecture to the entire first-year class each Tuesday. The following Friday, TAs facilitated and supervised six small section, 100-minute workshops in which students applied the lecture material, gradually working through the stages of analyzing, researching, and drafting an answer to a hypothetical issue or issues. The TAs followed carefully scripted protocols that we drafted, although TAs often offered really great suggestions. In the next Tuesday faculty lecture, one of us would debrief the previous workshop assignment after scanning student work very quickly and consulting with TAs. In the lectures we often provided general feedback—analyses, edited student samples, and the like, before moving on to the next lecture topic. TAs also maintained office hours, from a minimum of two hours per week to a high of about 10 hours at times of peak demand. Faculty scanned a random sample of student drafts of three different writing assignments, but we did not make any

comments on individual writings; we maintained four open office hours per week and met individually with students whom TAs identified as needing extra attention; we read, graded, and provided a general comment sheet only on the final writing of the quarter after it had been processed through several workshops and students had an opportunity to work with a TA on their drafts. Students were invited to rewrite that memo at the start of winter and earn extra points if they attached a detailed analysis of what changes they had made and why.

In winter quarter, BLS only has one credit and thus only one 50-minute period per week. (This makes the course too attenuated to hold students’ attention, and we plan to add a credit soon.) For the first half of the quarter, reference librarians lectured on research techniques and students did follow-up research exercises alone or in groups on their own time. TAs checked the research exercises. The second half of the quarter’s classes reverted to workshops in which TAs facilitated students’ work through a somewhat more complex hypothetical problem than they had encountered in fall. In spring, the course receives two credits so that we could reinstitute 100-minute classes, using some of the time for faculty lecture and some for TA-led workshops. In both quarters, faculty evaluation of individual work product was confined to the final assignment, in much the same manner as described for fall.

With 90 students each, Kathy and I had a very taxing workload that first year. The takeaway lesson, however, came from observing the workshops and assessing the end-of-the-year work product. The workshops were generally lively, fun affairs with students debating issues or, later, poring over each other’s prose. Collegiality ran high; many students continued to work outside of class with students they first encountered in the workshops. In fall in particular, it was very clear that the protocols and open discussions helped many students spot issues and develop alternative analyses much faster than if they had been working alone, or even producing drafts for the teachers. For many students, the workshops seemed to allay anxiety.

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Both from our own perspectives as longtime teachers, from some “external” evaluation by non-BLS faculty, and from the perspective of our colleague who returned to the “new” program after sabbatical, we believe the students’ final analysis and writing were as good as they were when the faculty role had been more directive and provided more individualized feedback. The chief virtue of the new model, however, is not in a stunning improvement in student work product. I don’t think most first-year students will write at a fully professional level no matter how well taught. The chief virtue of the new model is clearest in students’ end-of-year self-assessments in which they are invited to articulate how their approach to analyzing, researching, and drafting has evolved—and many do in amazing detail and with great eloquence.<sup>7</sup> Students demonstrate self-awareness of their habits and learning styles and an appreciation for flexibility in approach and for the benefits of using drafting as a means of honing thought. They are beginning to display “adaptive expertise”—the ability to recognize some familiar elements in a novel task and recall and apply doctrinal schema and skills they have learned in a different setting. Thus they leave the first-year writing program with lots of important information about the legal system and about legal analysis, some basic templates for structuring a written analysis, basic competence in matters of format and style, but most importantly an appreciation for the nuances of expert legal analysis and writing and a set of skills they can use to keep learning and improving. In my experience, our former, more teacher-directed course produced the same work product but not the same cognitive skills in our students and not the same collaborative community among students—and the former course required much more expert teacher time.

<sup>7</sup> These self-assessments are a joy to read. Among other virtues, they allow individual students to express themselves about issues that matter to them. They are almost always beautifully written, even by students whose legal writing style never surpassed pedestrian.

### What Works and What Doesn’t

After three years, the results are clear—student learning and achievement are just as good and, in some areas, better than they were under the old model. Many students appreciate the opportunities to work together, citing in their end-of-the-year self-assessments how much they have learned from listening to and reading each others’ work. They also express pleasure in discovering each other as people and in the collaborative, noncompetitive atmosphere of the workshops. Students express particular appreciation for their TAs. TAs, in turn, report great satisfaction in working with students and express how much they have learned from “taking BLS again,” and many report that the job has been a great credential with employers. Our writing faculty have more time to develop and teach other classes (and readers will be relieved to know that we are now back to four faculty teaching in the first-year program).<sup>8</sup>

The major downside has been relational or emotional for some students. Both the number and the intensity of student complaints about the program have escalated, faculty teaching evaluations have fallen, and some students and even some faculty express various levels of discomfort or alienation because the personal relationships that used to develop between many students and one teacher are less common. It may be that some of the student anxiety will abate as the program becomes “normal” and there are no longer any students with memories of the earlier model. Nevertheless, the fact that most entering students are keenly aware that other legal writing programs—including the excellent program of our neighbor law school at Seattle University—use a different, more traditional small-section model will require that we continue explaining our program to adjust our students’

<sup>8</sup> Beginning in fall 2006, I will teach upper-level writing courses and work on the development of an interdisciplinary writing program. Five faculty members, two with decades of experience, will teach in the first-year program. The experienced faculty will also teach upper-level courses.

expectations appropriately. Explaining our goals, methods, and expectations is just good practice anyway.

I think that some student discomfort may derive from the fact that the program now trains a spotlight on two attributes that were always true of our program but that are now front and center—that the course is more about legal analysis than writing, and that analysis and writing are codependent *processes* in which the student must engage actively and iteratively. Some students, like some of our non-LRW faculty, expect the course to be narrowly focused on writing particular documents with proper grammar, format, and citations. Some students cling to this expectation, probably because the learning goals seem more manageable, and for this kind of student, the course can be intensely frustrating. They perceive the workshops as wastes of time—the “blind leading the blind.” They long for a faculty member to “tell them what to do.” Unlike the learning theorists we follow, some students are convinced that a good education consists of “input” from the teacher to the student.

Finally, the course requires a lot of effort and energy from students. We try to engage the students’ intellects with contemporary, relatively sophisticated, and real problems. We rarely give them models to follow, requiring instead that they participate in a challenging intellectual activity whose endpoint is mysterious until they arrive at it. The course gives adult students a lot of control over their learning, but concomitantly, it places lots of responsibility on their shoulders. It requires intellectual and emotional maturity to share one’s own ideas and to listen to others. We think that’s good training for lawyers-to-be, but it does not come easily to every individual. Most of our students thrive, including most notably, most of the students who have had significant work experience, but a distinct minority has lots of trouble adapting.

In any event, we will make some changes in the coming year to address these downsides. The large lectures in the fall seem to generate considerable

hostility or alienation from a distinct subset of students. Their inattention, particularly surfing the Web and playing computer games during class, poses obstacles to learning for students who do find the lectures useful.

The reasons for the lectures’ unpopularity varies. One is simply a problem of setting student expectations. Some students expect a seminar in writing. Instead, we think of the fall quarter as primarily about legal method, and we begin the course by trying to “level the playing field” by lecturing about the legal system, about case and statute reading, and about legal reasoning techniques. For some students, the utility of this information to “writing” is not apparent. For others, it may already be familiar (or so they think). Even students who are reasonably well disposed to the large lectures have complained that the topics don’t correlate clearly enough with the workshop activities. We are working to make perfectly transparent how the information delivered in the large lecture either anticipates or reflects upon the work that they will do in the immediate succeeding or preceding workshops.

The biggest problem seems to have nothing to do with the content of the lectures. It is the room—the only one large enough to seat the whole class. It is dark, the lecturer is positioned in a pit at the front and center, there is a screen and one small whiteboard, and there are no microphones on the desktops. Students who speak in class may not be heard—or even always seen—by their classmates. Students who are disinclined to pay attention are assured of anonymity as they play video games. Although it is inefficient to do so, we will divide the class into smaller groups and repeat the lecture to avoid using this overwhelmingly large room.

Finally, it seems clear that we must adopt some strategies to “attach” a particular teacher to each student more clearly at the beginning of the course so that students feel confident that they know who will be evaluating their work and who they can approach with questions or problems that they don’t feel a TA can address. We hope to do this by having each faculty member participate more

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visibly in small section workshops with the students they will be evaluating later. We anticipate, however, that faculty will gradually cede most of the workshop facilitation to TAs in order to avoid turning those back into de facto teacher-led discussions.

### Conclusion

In the first year, all law students at our school are supposed to learn the same information and acquire the same basic analytic, research, and writing skills. Sadly, and perhaps unwisely, the traditional first-year curriculum at our school (and many others) was not designed to develop original thought, individual perspectives, or distinctive authorial voices. Instead, the primary agenda is to train individual brains and voices to think and speak and write in pretty much the same way. Carefully selected not only for academic accomplishment but for interpersonal skills and good time management, upper-class student TAs can be particularly good mentors for others undergoing this indoctrination because they remember their confusions and what strategies helped them succeed when they were novices.

In addition, I believe that good upper-class students can reliably determine whether a simple piece of writing conforms to these standardized expectations, and with some careful training can learn some basic techniques for helping novices without simply rewriting the paper themselves. Because TAs are closer to the first-year student's level, they are less intimidating than faculty to many students, and they may actually be as or more effective than an expert in explaining why a change needs to be made and how to do it. Finally, separating the coaches from the graders can eliminate a perennial source of emotional distress and frustration for some students and teachers because it diminishes students' expectations that the teacher will tell them what to do and, if she doesn't, that she is needlessly hiding a ball. In other words, that separating the mentors from the graders helps distinguish the necessary process from the quality of the final product. Participation in a designed workshop with other learners and more advanced student helpers at the front of the room

illustrates that the process is complex and takes a lot of individual effort by the novice even if the resulting products might look largely the same.

I hope that, in the next generation of law school curricula, expert analysts and teachers of legal rhetoric can redirect some of their energies and time. The plethora of great texts indicates that we have pretty thoroughly deconstructed the structure and content of basic, formal legal rhetoric, and we have identified a number of effective strategies for helping novices learn to participate in that discourse. Now that we understand so well what we are teaching, I think day-to-day guidance through those lessons can be delegated in part to others with less experience.

Even without additional resources, that delegation would free legal writing teachers' greater expertise for two other needs now unmet at our school: the nontypical student for whom the conventional lessons don't work; and the upper-level student who needs support in doing original research and analysis, who needs to develop a much more nuanced appreciation of professional audiences' expectations in multiple contexts, and who would benefit from additional practice and feedback on relatively nuanced issues of law, organization, style, voice, and purpose.

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